

NOTICE

Calculation of the Limited Liability Entity Tax & Estimated Payments

The purpose of this notice is to alert taxpayers that for taxable years beginning on or after January 1, 2007, an annual limited liability entity tax (LLET) shall be paid by every corporation and every limited liability pass-through entity doing business in Kentucky on Kentucky gross receipts or Kentucky gross profits. Entities subject to the LLET include C corporations, S corporations, limited liability companies, limited partnerships and limited liability partnerships. The LLET is the lesser of \$0.095 per \$100 of the entity's Kentucky gross receipts or \$0.75 per \$100 of the entity's Kentucky gross profits; or a minimum tax due of \$175. A small business exclusion from this tax shall apply if a corporation's or limited liability pass-through entity's gross receipts or gross profits from all sources are \$3 million dollars or less. If a business entity qualifies for the small business relief, the minimum tax due of \$175 will still be owed. Partial relief from the tax is available for a corporation or limited liability pass-through entity whose gross receipts or gross profits from all sources are greater than \$3 million but less than \$6 million. The gross receipts and gross profits calculations are practically the same as the calculations for the alternative minimum calculation (AMC) for taxable years beginning in 2005 and 2006.

The LLET was created by HB 1 (2006 Extraordinary Session) and replaced the AMC which was repealed for taxable years beginning after December 31, 2006. The primary purpose of HB 1 was to create federal conformity by amending KRS 141.010(24) to provide that for taxable years beginning before January 1, 2005 and after December 31, 2006, "corporation" means "corporation as defined in Section 7701(a)(3) of the Internal Revenue Code." For taxable years beginning on or after January 1, 2007, limited liability pass-through entities will no longer be classified as corporations subject to corporation income tax.

Entities exempt from the LLET are: (1) Public service corporations subject to tax under KRS 136.120; (2) Open-end registered investment companies organized under the laws of this state and registered under the Investment Company Act of 1940; (3) Any property or facility which has been certified as a fluidized bed energy production facility as defined in KRS 211.390; (4) an alcohol production facility as defined by KRS 247.910; (5) Real estate investment trusts as defined in Section 856 of the Internal Revenue Code; (6) Regulated investment companies as defined in Section 851 of the Internal Revenue Code; (7) Real estate mortgage investment conduits as defined in Section 860D of the Internal Revenue Code; (8) Personal service corporations as defined in Section 269A(b)(1) of the Internal Revenue Code; and (9) Cooperatives described in Sections 521 and 1381 of the Internal Revenue Code, including farmers' agriculture and other cooperatives organized or recognized under KRS Chapter 272, advertising cooperatives, purchasing cooperatives, homeowners associations including those described in Section 528 of the Internal Revenue Code, rural electric cooperatives, rural telephone cooperatives and political organizations.

Corporation and limited liability pass-through entities subject to the LLET are required to make estimated tax payments as provided by KRS 141.042. The estimated tax payments are made on Kentucky Form 720-ES, "2007 Limited Liability Entity/Corporation Income Tax", vouchers and for 2007, the vouchers include both the LLET and the corporation income tax. **Estimated payments for LLET cannot be made via EFT. LLET estimates should be mailed to the Kentucky Department of Revenue, Frankfort, KY 40619.**

For calendar year 2007 filers, the first estimated tax payment is due on June 15, 2007. Limited liability pass-through entities, except for S corporations having passive investment income, built-in-gains, or installments of tax on the recapture of LIFO reserves as provided by KRS 141.040(14), should only pay the LLET. The safe harbor limitation provided by KRS 141.042(2) applies to LLET estimated payments for taxable years beginning on or after January 1, 2008.

A corporation or limited liability pass-through entity that is a partner, member, or shareholder of a limited liability pass-through entity is allowed a credit against its LLET equal to its proportionate share of the limited liability pass-through entity's LLET, after the LLET is reduced by the minimum tax due of \$175 and any other nonrefundable credits. The credit from multi-layered limited liability pass-through entities shall include the proportionate share of the credit from each lower layer, after the LLET is reduced by the minimum tax due of \$175 and any other nonrefundable credits at each layer.

A corporation is allowed a nonrefundable credit against the corporation income tax imposed by KRS 141.040 equal to the LLET computed on its gross receipts or gross profits as provided by KRS 141.0401(2), reduced by the minimum tax due of \$175 and by any other nonrefundable credits for which the corporation may be allowed, including any credit for LLET paid by wholly or partially owned limited liability pass-through entities.

A corporation that is a partner or member of a limited liability pass-through entity is allowed a nonrefundable credit against the tax imposed by KRS 141.040 equal to the corporation's proportionate share of the limited liability pass-through entity's LLET, after the LLET is reduced by the minimum tax due of \$175 and any other nonrefundable credits. The credit allowed a corporation against the tax imposed by KRS 141.040 shall be applied only to income tax assessed on the corporation's proportionate share of income from the limited liability pass-through entity as provided by KRS 141.0401(3)(b). Any remaining credit shall be disallowed and cannot be carried forward to the next tax year.

An individual that is a partner, member, or shareholder of a limited liability pass-through entity is allowed a nonrefundable credit against the tax imposed by KRS 141.020 equal to the individual's proportionate share of the limited liability pass-through entity's LLET, after the LLET is reduced by the minimum tax due of \$175 and any other nonrefundable credits. The credit allowed an individual that is a partner, member, or shareholder of a

limited liability pass-through entity against taxes imposed by KRS 141.020 shall be applied only to income tax assessed on the individual's proportionate share of income from the limited liability pass-through entity as provided by KRS 141.0401(3)(b). Any remaining credit shall be disallowed and cannot be carried forward to the next tax year.

Registration for the Limited Liability Entity Tax

The Kentucky Tax Registration Application (Form 10A100) has been updated to accommodate the new LLET. The updated March 2007 application can be downloaded from www.revenue.ky.gov. On the updated application, a section has been added for the LLET. The following will help determine if the LLET section should be completed:

- If the business is a Limited Partnership (LP), Limited Liability Partnership (LLP), or Limited Liability Company (LLC) federally taxed as a Sole Proprietorship, or an LLC federally taxed as a Partnership, the Limited Liability Entity Tax Account Section will need to be completed.
- If the business is a Real Estate Investment Trust (REIT), Regulated Investment Conduit (RIC), Real Estate Mortgage Investment Conduit (REMIC), cooperatives or Homeowner's Association, only the Corporation Income Tax Account section will need to be completed.
- If the business is a Corporation, Sub S Corporation, Association, or an LLC federally taxed as a Corporation or an LLC federally taxed as a Sub S Corporation, then both the Corporation Income Tax Account and Limited Liability Entity Tax Account sections of the application will need to be completed.

Due to the extensive nature of these changes, the Department of Revenue will no longer be able to accept older versions of the Kentucky Tax Registration Application (updated prior to March 2007). Any applications received with version dates prior to March 2007 will be returned to the taxpayer, along with a current version to complete.

Please direct any registration questions regarding this notice to the Division of Registration and Data Integrity at 502-564-3306. For all other questions related to the LLET, please contact the Division of Corporation Tax at 502-564-8139. Please check the Department's website at www.revenue.ky.gov for forms and additional information on the LLET.